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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/870,073	05/30/2001	Joseph L. Menner	1670A1	6760
7590	04/22/2004		EXAMINER	
			LEWIS, CHERYL RENEA	
			ART UNIT	PAPER NUMBER
			2177	
DATE MAILED: 04/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

P26

<b>Office Action Summary</b>	Applicant No.	Applicant(s)
	09/870,073	MENNER ET AL.
	Examiner	Art Unit
	Cheryl Lewis	2177

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 26 January 2004.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-45 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____.  | 6) <input type="checkbox"/> Other: _____.                                   |

**Response to Request for Reconsideration**

1. This Office action is in response to the applicants' communication received on January 26, 2004, paper no. 4.
2. Claims 1-45 are presented for examination.
3. Applicants' arguments with respect to claims 1-45 have been considered but they are not deemed to be persuasive.

**Response to Arguments**

4. On page 2 of the applicants' remarks, the applicants have (1) stated the rejection of claims 1-45 citing the various prior art references cited in the first Office Action issued on October 24, 2003, paper no. 3 and (2) the applicants' have presented independent claim 1 to explain the features of the invention. On pages 3 and 4, the applicants further explain the invention of claims 1 and 38, also the applicants provide a summarized detail of the Sherman reference.

The examiner believes that the applicants' arguments to the Sherman reference begins on page 4 of the applicants' remarks.

a1. The applicants' arguments recite the following: "The present invention requires providing a plurality of decorative product databases...However, there is no separate decorative product database for each type of product...The Sherman patent does not discloses separate databases..."  
page 4, lines 14-31.

a2. The examiner respectfully disagrees with the applicants' arguments.  
Sherman teaches decorative product databases. The applicants are claiming (respectively, independent claims 1 and 38) more than one database that claims

decorative products. First, Sherman teaches an image database, the image database in the form of an addressable optical videodisk having frames, the frames which portrays an individual design component. Each disk 22 placed within videodisk player 20 comprises a database of design component product images (Abstract lines 4-13, column 6 lines 35-65). The first database described by Sherman is an image database, the image database does provide images of decorative products as stated in the applicants' arguments. Further, Sherman's image database comprises, as well as portrays and/or displays "design component product images". It appears that Sherman's image database has two fundamental advantages over the decorative product databases of the applicants' invention. Sherman's image database has the ability to portray and/or display "design component product images" and comprise (embodies) an individual design component and "design component product images". If an image database which can portray and/or display "design component product images", as well as comprise (embodies) "design component product images"/portrays an individual design component, then it is obvious to one of ordinary skill in the art of database development that Sherman's image database comprises the applicants' claim for a "database to have decorative products". The examiner cannot find any difference between the applicants' claimed subject matter for a "database to comprise a decorative product" and the image database of Sherman's method to comprise a decorative product. Second, the other database to comprise decorative products as taught by Sherman is a "characteristics database". Sherman's "characteristics database" is provided to identify each portrayed design component by a variety of product categories

including at least color, price, manufacturer, etc. The “characteristics database” and/or “database of product characteristics” comprises a number of files of key records corresponding to the number of categories established for product characteristics of product type (Abstract lines 9-13, column 7 lines 65-68, column 8 lines 1-5 column 9 lines 59-66). Again, the “characteristics database” describes a specific categorization of decorative products for the claimed “database comprising decorative products”. Sherman’s “characteristics database” categorizes characteristics of decorative product types using a number of files of key records.

b1. The applicants’ arguments recite the following: “In the present invention, a search occurs between one database of one product type and another separate database. The Sherman patent does not disclose separate databases with searching between the databases...”

b2. The examiner respectfully disagrees with the applicants’ arguments.

Sherman teaches the computer initially displays on a monitor a query to the user for selection of a design component product type (column 12 lines 56-61). Sherman’s method initiates a query method, the query method enables a user to select a specific design component product type. In order for the query method to satisfy the query initiated by the user for a specific design component product type, then the databases of Sherman’s method have to be searched in an effort to retrieve the specified design component product type. As presented in the arguments above, Sherman’s invention has (1) the image database and the (2) “characteristics database”, wherein both databases comprise decorative products. The applicants’ invention is claiming that a search is conducted between one database of one product type and another separate database. Sherman’s method queries either the (1) image database or (2) the

"characteristics database" in an effort to satisfy the query of the user for a design component product type. Sherman does conduct a search between one database of product type and another separate database.

c1. The applicants' arguments recite the following: "Sherman does not consider selecting products having coordinating colors from various product types."

c2. The examiner disagrees with the applicants' arguments. Sherman teaches a user can select from a category a color as one of the characteristics to specify data elements of the decorative products (column 7 lines 58-66). Also, Sherman describes the decorative products comprising a desired color colorimeter, quantities of hue, and the chroma and value of an exposed color (column 9 lines 9-18). Further, Sherman teaches where a portable product sample is not available, such as where the pre-existing color selection is paint supplied to walls, a color reference card structure such as is illustrated in figure 2 may be utilized at the site of the pre-existing product.

d1. The applicants' arguments recite the following: "The starting point for the process of the present invention is a preselected decorative product. The user selects a product in one of the databases per step (2) of claim 1 and step (3) of claim 33. In claim 1, step (2) the "at least one decorative product" is a preselected decorative product..."

d2. The examiner respectfully disagrees with the applicants' arguments. Sherman teaches the user can select a product in one of the databases. Sherman teaches based on a query criteria the user can make a selection of a design component product type. This process has been outlined in the examiner's arguments stated above in step B2. Again, Sherman states that its' system operation illustrates for the selection and display of design component products meeting desired constraints of

price, color and other characteristics in figure 3. It appears that Sherman meets the qualifications for the applicants' claim for "The starting point for the process of the present invention is a preselected decorative product. The user selects a product in one of the databases per step (2) of claim 1 and step (3) of claim 33. In claim 1, step (2) the "at least one decorative product" is a preselected decorative product..." as being the basis of the qualification standards for a preselection product. Sherman's method outlines steps which comprise "preselection product" means, Sherman outlines the steps with the user selection for a product, the system criteria for product selection, and a query to retrieve a specified decorative product from the databases comprising an image database of decorative products and a "characteristics database" of decorative products.

e1. The applicants' arguments recite the following: "The Office Action asserts that Sherman only fails to teach "an identification of color data of the decorative products and coordinating color based on the color data identified"....The Dichter patent is not particularly relevant to the claimed invention..."

e2. The examiner respectfully disagrees with the applicants' arguments. The examiner has relied on the Dichter reference to teach an "identification of the color data of the decorative product" and "coordinating color based on the color data identified". Dichter teaches identification of the color data having a primarily red dress of a given style and shape having a pattern of primarily red color variations (column 3 lines 13-15). Dichter teaches that red is an identification for the claimed "color data" means. Again, Dichter teaches coordinating color based on the color data identified through a desktop publishing environment that provides a catalog, for example, another dress of a different style and shape as an original image which is primarily blue, for example, a yellow

background, representing a composite original image which may be a photograph. The blue dress has a different pattern of primarily blue variations, as indicated by the different stippling pattern. It is desired by the user to change the color of the blue dress to a color scheme similar to the red dress. It is of course understood that in this example when the term "red" dress is employed, that red is a variation of colors of different hue, saturation, and luminance (HSL) (column 3 lines 16-27).

f1. The applicants' arguments recite the following: "None of the remaining references including Eichel, Koehler, Ringland, Arai and Rice account for the deficiencies of the Sherman or Dichter patents to disclose the method and system of the present invention...."

f2. The examiner respectfully disagrees with the applicants' arguments.

Regarding the Sherman, Dichter, Eichel, Koehler, Ringland, Arai, and Rice references for the combined 103 rejection. It is believed that the combination of references does constitute a proper 103 rejection. Court rulings state (1) Common sense, an artisan is likely to extract more than a layman from reading a reference. Furthermore, as the Court has said "it is not necessary that the cited references or prior art specifically suggest making the combination."

**In re Nilssen, 851 F.2d 1401, 1403, 7 USPQ2d 1500, 1502 (CAFC 1988).**

The examiner has relied on the Eichel reference to teach a computer network. The Koehler reference has been relied on to teach a spectrophotometer. The Ringland reference has been relied on to teach products consisting of wallpaper, floor coverings, and window treatments. The Arai reference has been relied on to teach L\*a\*b\* measurement of a product. The Rice reference has been relied on to teach a paint database containing color data. The above cited references (Eichel, Koehler, Ringland,

Arai, and Rice) have been relied on to teach the applicants' claims for 'a computer network', 'a spectrophometer', 'wallpaper, floor coverings, and window treatments', 'L\*a\*b\* measurement of a product', and 'a paint database containing color data' to support the 103 rejection of the first Office Action issued on October 24, 2003, paper no.

3. The applicants' have not addressed those limitations to which Eichel, Koehler, Ringland, Arai, and Rice has been cited in the Office Action to reject the applicants' above mentioned claim limitations.

The remaining claims 2-37 and 39-45 each comprise claim limitations corresponding substantially to the above-discussed claim limitations and are also addressed by the above remarks.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**NAME OF CONTACT**

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Lewis whose telephone number is (703) 305-8750. The examiner can normally be reached on 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (703) 305-9790. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

(703) 746-5651 (Use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper/amendment be faxed directly to them on occasions.).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

  
Cheryl Lewis  
Patent Examiner  
April 19, 2004

  
JOHN BREENE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100